IP 06-0106-CR 1 M/F US v Williams
Magistrate Kennard P. Foster Signed on 8/22/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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| USA, | ) | |
| | ) | |
| Plaintiff, | ) | |
| vs. | ) | |
| | ) | |
| WILLIAMS, CLEVON, | ) | CAUSE NO. IP06-0106-CR-01-M/F |
| | ) | |
| Defendant. | ) | |

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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| UNITED STATES OF AMERICA, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | |
| | ) | CAUSE NO. IP 06-0106-CR-01 M/F |
| CLEVON WILLIAMS, | ) | |
| | ) | |
| Defendant. | ) | |

ENTRY AND ORDER OF DETENTION PENDING TRIAL

SUMMARY

Clevon Williams was charged by a criminal complaint issued on June 30, 2006, with possession with intent to distribute cocaine and cocaine base, possession of a firearm by a convicted felon, and possession of a firearm in furtherance of a drug trafficking offense. At the initial appearance on July 7, 2006, the government moved for detention. On July 12, 2006, a indictment was returned by a grand jury charging Williams with substantially the same offenses set forth in the complaint.

A detention hearing was held on July 12, 2006. The United States appeared by Assistant United States Attorney James P. Hanlon for Barry D. Glickman. Clevon Williams appeared in person and by his appointed counsel, James McKinley. The government established by clear and convincing evidence, predicated upon the facts giving rise to the criminal complaint and indictment, Defendant's criminal history and record, and the credible evidence presented at the detention hearing, that no condition or combination of conditions

will reasonably assure the safety of the community if he is released. The government further established by a preponderance of the evidence, also predicated upon the facts giving rise to the criminal complaint and indictment, and Defendant's criminal history and record, that there is no condition or combination of conditions which will reasonably assure Defendant's appearance as required. The Court ordered that Defendant be detained.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Clevon Williams was charged by a criminal complaint issued on June 30, 2006, with possession of a firearm by a convicted felon, possession with intent to distribute cocaine and cocaine base, and possession of a firearm in furtherance of a drug trafficking offense, in violation of 18 U.S.C. § 922(g)(1), 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(iii), and 18 U.S.C. § 924(c). The court takes judicial notice of the criminal complaint and the supporting affidavit.

2. An initial appearance on the criminal complaint was held on July 7, 2006. The government moved for detention pursuant to 18 U.S.C. §§ 3142(f)(1)(B) and (C).

3. On July 12, 2006, a four-count indictment was returned charging Defendant with:

Count 1: possession with intent to distribute 50 grams or more of a mixture or substance containing a detectable amount of cocaine base in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(iii);

Count 2: possession with intent to distribute a mixture or substance containing a detectable amount of cocaine in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C);

Count 3: carrying a firearm during a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1); and

Count 4: possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1).

The complaint is subsumed by the indictment.

4. The maximum penalties for the offenses charged in the indictment are as follows:

Count 1: incarceration of 10 years to life, a fine of $4,000,000, and supervised released of five years;

Count 2: incarceration of up to 20 years, a fine of $1,000,000, and supervised released of three years;

Count 3: incarceration of five years consecutive to life, a fine of $250,000, and supervised released of three years;

Count 4: incarceration of 10 years, a fine of $250,000, and supervised release of three years.

5. The Court admitted as Exhibit 1 the Pre-Trial Services Report prepared by the U.S. Probation Office on the issue of Defendant's release or detention. Neither party objected to the admission of Exhibit 1.

6. Exhibit 1 demonstrates Defendant's criminal record to include:

- a juvenile adjudication for battery (1991); and
- a felony conviction for criminal recklessness (1996).

Exhibit 1 further demonstrates Defendant's criminal history to include multiple arrests, and subsequent dismissal of, charges for the following crimes:

- battery and carrying a handgun without a license (1993);
- battery (1993);
- dealing cocaine (2000);

- attempted murder (2003); and
- dealing cocaine (2006).

7. The government introduced as Government Exhibit 1 certified copies of the judgment and conviction order and probable cause affidavit relating to Defendant's conviction for criminal recklessness. This evidence established that the facts giving rise to Defendant's conviction for criminal recklessness involved Defendant shooting a person multiple times during an argument.

8. The credible evidence presented through the testimony of ATF Task Force Officer Chris Reed established that the facts giving rise to the 2003 attempted murder charge involved Defendant shooting a person multiple times during an argument. The victim, who ultimately failed to appear to testify at trial, had given a statement to law enforcement identifying Defendant as the person who shot him.

9. The government submitted the issue of detention on the complaint and affidavit, the indictment, Government Exhibit 1, and the testimony of TFO Reed. Defendant did not present any evidence, but did make an evidentiary proffer regarding his length of residence and family ties in the community.

10. Defendant qualifies for a detention hearing upon the government's motion that this case involves an offense for which the maximum penalty is life imprisonment, 18 U.S.C. § 3142(f)(1)(B), and an offense for which a maximum term of imprisonment of ten years or more is prescribed by the Controlled Substances Act, 18 U.S.C. § 3142(f)(1)(C). The Court finds *sua sponte* that Defendant also qualifies for a detention hearing on the basis that this case

involves a serious risk that Defendant will obstruct or attempt to obstruct justice, or threaten, injure or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror, 18 U.S.C. § 3142(f)(2)(B).

11. Pursuant to 18 U.S.C. § 3142(e), a presumption of detention arises based on the nature of the charges against Defendant.

12. Williams has not rebutted this presumption. Even if he did, the evidence relevant to the factors set forth in 18 U.S.C. § 3142(g) requires that Williams be detained as there is no condition or combination of conditions of release sufficient to reasonably assure that he will appear as required for further proceedings, and will not engage in dangerous criminal activity pending trial. Therefore, Williams is ORDERED DETAINED.

13. When evaluating the government's motion for pretrial detention, the Court engages a two-step analysis: first, the Court determines whether one of six conditions exists for considering a defendant for pretrial detention; second, after a hearing, the Court determines whether the standard for pretrial detention is met. *See United States v. Friedman*, 837 F.2d 48, 49 (2d Cir. 1988).

A defendant may be considered for pretrial detention in only six circumstances: when a case involves one of either four types of offenses or two types of risks. A defendant is eligible for detention upon motion by the United States in cases involving: (1) a crime of violence; (2) an offense with a maximum punishment of life imprisonment or death; (3) specified drug offenses carrying a maximum term of imprisonment of ten years or more; or (4) any felony

where the defendant has two or more federal convictions for the above offenses or state convictions for identical offenses. *See* 18 U.S.C. § 3142(f)(1). A defendant is eligible for detention upon motion by the United States or the Court *sua sponte* in cases involving: (5) a serious risk that the person will flee; or (6) a serious risk that the defendant will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, a prospective witness or juror. *See* § 3142(f)(2); *United States v. Sloan*, 820 F. Supp. 1133, 1135-36 (S.D. Ind. 1993). The existence of any of these six conditions triggers the detention hearing which is a prerequisite for an order of pretrial detention. *See* 18 U.S.C. §3142(e). The judicial officer determines the existence of these conditions by a preponderance of the evidence. *Friedman*, 837 F.2d at 49. *See also United States v. DeBeir*, 16 F. Supp.2d 592, 595 (D. Md. 1998) (serious risk of flight); *United States v. Carter*, 996 F. Supp. 260, 265 (W.D. N.Y. 1998) (same). In this case, the United States moved for detention pursuant to 18 U.S.C. §§ 3142(f)(1)(B) and (C). The Court has found that the government satisfied its burden of establishing that these bases exists. The Court also found on its own motion that Defendant qualifies for a detention hearing pursuant to 18 U.S.C. § 3142(f)(2)(B).

Once it is determined that a defendant qualifies under any of the six conditions set forth in Section 3142(f), the court may order a defendant detained before trial if the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community. *See* 18 U.S.C. § 3142(e). Detention may be based on a showing of either dangerousness or risk of flight; proof of both is not required. *See United States v. Fortna*, 769 F.2d 243, 249 (5th Cir. 1985). With respect to reasonably assuring the appearance of the defendant, the United States bears the

burden of proof by a preponderance of the evidence. *See United States v. Portes*, 786 F.2d 758, 765 (7th Cir. 1985); *United States v. Himler*, 797 F.2d 156, 161 (3d Cir. 1986); *United States v. Vortis*, 785 F.2d 327, 328-29 (D.C. Cir.), *cert. denied*, 479 U.S. 841, 107 S. Ct. 148, 93 L.Ed.2d 89 (1986); *Fortna*, 769 F.2d at 250; *United States v. Chimurenga*, 760 F.2d 400, 405-06 (2d Cir. 1985); *United States v. Orta*, 760 F.2d 887, 891 & n. 20 (8th Cir. 1985); *United States v. Leibowitz*, 652 F. Supp. 591, 596 (N.D. Ind. 1987).

With respect to reasonably assuring the safety of any other person and the community, the United States bears the burden of proving its allegations by clear and convincing evidence. 18 U.S.C. § 3142(f); *United States v. Salerno*, 481 U.S. 739, 742, 107 S. Ct. 2095, 2099, 95 L.Ed.2d 697 (1987); *Portes*, 786 F.2d at 764; *Orta*, 760 F.2d at 891 & n. 18; *Leibowitz*, 652 F. Supp. at 596; *United States v. Knight*, 636 F.Supp. 1462, 1465 (S.D. Fla. 1986). Clear and convincing evidence is something more than a preponderance of the evidence but less than proof beyond a reasonable doubt. *Addington v. Texas*, 441 U.S. 418, 431-33, 99 S. Ct. 1804, 1812-13, 60 L.Ed.2d 323 (1979). The standard for pretrial detention is "reasonable assurance"; a court may not order pretrial detention because there is no condition or combination of conditions which would *guarantee* the defendant's appearance or the safety of the community. *Portes*, 786 F.2d at 764 n. 7; *Fortna*, 769 F.2d at 250; *Orta*, 760 F.2d at 891-92.

14. The Court further considers the evidence presented on the issue of release or detention weighed in accordance with the factors set forth in 18 U.S.C. § 3142(g) and the legal standards set forth above. Among the factors considered both on the issue of flight and dangerousness to the community are the defendant's character, physical and mental condition,

family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearances at court proceedings. 18 U.S.C. § 3142(g)(3)(A). The presence of community ties and related ties have been found to have no correlation with the issue of safety of the community. *United States v. Delker*, 757 F.2d 1390, 1396 (3rd Cir. 1985); S.Rep. No. 98-225, 98th Cong., 1st Sess. at 24, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3182, 3207-08.

15. In this regard, the Court finds and concludes that the evidence in this case demonstrates the following:

a. This case involves controlled substances and a firearm. Based on the facts giving rise to the charges, Defendant's criminal history, and the credible evidence presented at the detention hearing, the Court infers that Defendant's trade is dealing drugs.

b. A rebuttable presumption in favor of pre-trial detention applies based on the nature of the charges. Williams has not rebutted the presumption of detention.

c. Even if Williams had rebutted the presumption in favor of pre-trial detention, the Court nonetheless finds that he should be detained in light of the factors set forth in 18 U.S.C. § 3142(g). The credible evidence presented at the detention hearing establishes that Williams on two separate occasions shot individuals multiple times. Williams has also had persistent and continuous contacts with law enforcement. In light of the number and nature of these contacts, Williams has established a pattern of disregarding the law and engaging in dangerous conduct involving violence and drugs. If released, he will not follow the law or the conditions of pre-trial release. Williams presents a serious risk of danger to the community.

d. The evidence presented against Williams is strong.

The Court having weighed the evidence regarding the factors found in 18 U.S.C. § 3142(g), and based upon the totality of evidence set forth above, concludes that the Defendant clearly and convincingly is a serious risk of flight and a danger to the community.

WHEREFORE, Clevon Williams is hereby committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. He shall be afforded a reasonable opportunity for private consultation with defense counsel. Upon order of this Court or on request of an attorney for the government, the person in charge of the corrections facility shall deliver the defendant to the United States Marshal for the purpose of an appearance in connection with a Court proceeding.

Dated this ___ day of July, 2006.

_____
Kennard P. Foster, Magistrate Judge
United States District Court

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U. S. Probation, Pre-Trial Services

U. S. Marshal Service